

15 FEB 2000



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Patent Cooperation Treaty  
Legal Office

Address: Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

Laura A. Coruzzi  
PENNIE & EDMONDS  
1155 Avenue of the Americas  
New York, N.Y. 10036-2711

In re Application of  
KERN, Andrea et al  
U.S. Application No.: 08/637,752  
PCT No.: PCT/EP94/03564  
Int. Filing Date: 28 October 1994  
Priority Date: 28 October 1993  
Attorney Docket No.: 8484-013-999  
For: ADENO-ASSOCIATED VIRUS - ITS  
DIAGNOSTIC USE WITH EARLY  
ABORTION

DECISION ON  
PETITION FOR REVIVAL  
UNDER 37 CFR 1.137(b)

This decision is in response to applicants' "Renewed Petition Under 37 CFR § 1.137(b)," filed via facsimile on 08 December 1999.

**BACKGROUND**

On 18 October 1999, a decision dismissing applicants' petition under 37 CFR 1.137(b) was mailed because of a failure to provide the requisite statement, or furnish the proper terminal disclaimer and fee as required.

On 08 December 1999, applicants filed via facsimile the instant petition and a terminal disclaimer.

**DISCUSSION**

As previously stated, a petition under 37 CFR 1.137(b) requesting to revive an application on the grounds of unintentional delay must be accompanied by (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). Items (1) and (2) have been satisfied.

Concerning item (3), applicants' attorney states that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" as required.

With regards to item (4), 37 CFR 1.137(c) states, in part:

Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

The terminal disclaimer submitted limits its application to 35 U.S.C. 120 benefits, and is therefore unacceptable. Thus, item (4) is not satisfied.

Accordingly, all the requirements of 37 CFR 1.137(b) have not yet been satisfied.

The Statutory Disclaimer fee of \$110.00 has been charged to Counsel's Deposit Account No. 16-1150 as authorized.


### CONCLUSION


The renewed petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

Since a grantable petition to revive has not been filed, the international application remains **ABANDONED** as to the United States.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." A proper response must include a new terminal disclaimer. Applicants are advised that extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

  
Boris Milef  
PCT Legal Examiner  
PCT Legal Office

  
James Thomson  
PCT Legal Attorney  
PCT Legal Office

Tel.: (703) 308-6457